

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 643

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF THE SOLID WASTE ACT TO PROVIDE FOR SEPARATE FEE SCHEDULES FOR PERMIT APPLICATION PROCESSING AND FOR PERMIT AUDITING; PROVIDING FOR REDUCED ANNUAL FEES FOR PUBLIC FACILITIES PROPORTIONAL TO RECYCLED WASTE; RECONCILING CONFLICTING AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1991 BY REPEALING LAWS 1991, CHAPTER 185, SECTION 2; MAKING APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-9-3 NMSA 1978 (being Laws 1990, Chapter 99, Section 3) is amended to read:

"74-9-3. DEFINITIONS.--As used in the Solid Waste Act:

A. "active life of site permit" means a permit issued by the division for a new solid waste facility, or for an existing solid waste facility that has opted into the active

1 life of site permit condition pursuant to Subsection G of  
2 Section 74-9-24 NMSA 1978, which permit term includes the  
3 useable life of the property described by the applicant for a  
4 new permit or for an existing permit extended pursuant to that  
5 subsection; provided that the property for the facility does  
6 not exceed five hundred acres and the facility complies with  
7 the provisions of the Solid Waste Act and the solid waste  
8 management regulations promulgated by the board;

9 B. "active life of site registration" means a  
10 registration issued by the division for a new solid waste  
11 facility, or for an existing solid waste facility that has  
12 opted into the active life of site registration condition  
13 pursuant to Subsection G of Section 74-9-24 NMSA 1978, which  
14 registration term extends for the useable life of the facility;  
15 provided that the facility complies with the requirements of  
16 the Solid Waste Act and the solid waste management regulations  
17 promulgated by the board and which registration is exempt from  
18 fees set forth in Section 74-9-8 NMSA 1978;

19 [A.] C. "agricultural" means all methods of  
20 production and management of livestock, crops, vegetation and  
21 soil. This includes, but is not limited to, raising,  
22 harvesting and marketing. It also includes, but is not limited  
23 to, the activities of feeding, housing and maintaining animals  
24 such as cattle, dairy cows, sheep, goats, hogs, horses and  
25 poultry;

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1           D. "audited costs" means costs incurred by the  
2 division that can be verified by the division using accepted  
3 governmental accounting procedures;

4           ~~[B.]~~ E. "board" means the environmental improvement  
5 board;

6           ~~[C.]~~ F. "commercial hauler" means any person  
7 transporting solid waste for hire by whatever means for the  
8 purpose of disposing of the solid waste in a solid waste  
9 facility, except that the term does not include an individual  
10 transporting solid waste generated on or from ~~[his]~~ the  
11 person's residential premises for the purpose of disposing of  
12 it in a solid waste facility;

13           ~~[D.]~~ G. "construction and demolition debris" means  
14 materials generally considered to be not water soluble and  
15 nonhazardous in nature, including, but not limited to, steel,  
16 glass, brick, concrete, asphalt roofing materials, pipe, gypsum  
17 wallboard and lumber from the construction or destruction of a  
18 structure as part of a construction or demolition project, and  
19 includes rocks, soil, tree remains, trees and other vegetative  
20 matter that normally results from land clearing or land  
21 development operations for a construction project, but if  
22 construction and demolition debris is mixed with any other  
23 types of solid waste, whether or not originating from the  
24 construction project, it loses its classification as  
25 construction and demolition debris;

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1           ~~[E.]~~ H. "densified-refuse-derived fuel" means a  
2 product resulting from the processing of mixed municipal solid  
3 waste in a manner that produces a fuel suitable for combustion  
4 in existing or new solid-fuel-fired boilers;

5           ~~[F.]~~ I. "director" means the director of the  
6 environmental improvement division of the ~~[health and~~  
7 ~~environment]~~ department of environment;

8           ~~[G.]~~ J. "division" means the environmental  
9 improvement division of the ~~[health and environment]~~ department  
10 of environment;

11           ~~[H.]~~ K. "municipality" means any incorporated city,  
12 town or village, whether incorporated under general act,  
13 special act or special charter, incorporated counties and H  
14 class counties;

15           L. "permit modification" means a horizontal or  
16 vertical expansion of the solid waste facility within the  
17 property boundary not to exceed five hundred acres or the  
18 expansion of a solid waste facility beyond its existing  
19 boundary, the combined total of which shall not exceed five  
20 hundred acres, and the modification is issued by the division  
21 under rules adopted by the board for permitting modifications  
22 of solid waste facilities, but "permit modification" does not  
23 mean a modification of pollution control systems in order to  
24 comply with changes in g2federal or state statutes or  
25 regulations relevant to the operation of the facility;

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1           ~~[F.]~~ M. "person" means an individual or any entity,  
2 including federal, state and local governmental entities,  
3 however organized;

4           ~~[J.]~~ N. "plan" or "state plan" means the solid  
5 waste management plan required to be developed under Section [~~4~~  
6 ~~of the Solid Waste Act~~] 74-9-4 NMSA 1978;

7           ~~[K.]~~ O. "program" or "state program" means the  
8 comprehensive solid waste management program described in  
9 Section [~~12 of the Solid Waste Act~~] 74-9-12 NMSA 1978;

10          ~~[L.]~~ P. "recyclable materials" means materials that  
11 would otherwise become solid waste if not recycled and that can  
12 be collected, separated or processed and placed in use in the  
13 form of raw materials, products or densified-refuse-derived  
14 fuels;

15          ~~[M.]~~ Q. "recycling" means any process by which  
16 recyclable materials are collected, separated or processed and  
17 reused or returned to use in the form of raw materials or  
18 products;

19          R. "registered facility" means a facility that is  
20 exempt from permitting requirements as set forth in the Solid  
21 Waste Act and under rules promulgated by the board;

22          ~~[N.]~~ S. "solid waste" means any garbage, refuse,  
23 sludge from a waste treatment plant, water supply treatment  
24 plant or air pollution control facility and other discarded  
25 material, including solid, liquid, semisolid or contained

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1 gaseous material resulting from industrial, commercial, mining  
2 and agricultural operations and from community activities.

3 "Solid waste" does not include:

4 (1) drilling fluids, produced waters and other  
5 nondomestic wastes associated with the exploration, development  
6 or production, transportation, storage, treatment or refinement  
7 of crude oil, natural gas, carbon dioxide gas or geothermal  
8 energy;

9 (2) fly ash waste, bottom ash waste, slag  
10 waste and flue gas emission control waste generated primarily  
11 from the combustion of coal or other fossil fuels and wastes  
12 produced in conjunction with the combustion of fossil fuels  
13 that are necessarily associated with the production of energy  
14 and that traditionally have been and actually are mixed with  
15 and are disposed of or treated at the same time with fly ash,  
16 bottom ash, boiler slag or flue gas emission control wastes  
17 from coal combustion;

18 (3) waste from the extraction, beneficiation  
19 and processing of ores and minerals, including phosphate rock  
20 and overburden from the mining of uranium ore, coal, copper,  
21 molybdenum and other ores and minerals;

22 (4) agricultural waste, including, but not  
23 limited to, manures and crop residues returned to the soil as  
24 fertilizer or soil conditioner;

25 (5) cement kiln dust waste;

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1 (6) sand and gravel;

2 (7) solid or dissolved material in domestic  
3 sewage or solid or dissolved materials in irrigation return  
4 flows or industrial discharges that are point sources subject  
5 to permits under Section 402 of the Federal Water Pollution  
6 Control Act, 33 U.S.C. Section 1342 or source, special nuclear  
7 or by-product material as defined by the Atomic Energy Act of  
8 1954, 42 U.S.C. Section 2011 et seq.;

9 (8) densified-refuse-derived fuel; or

10 (9) any material regulated by Subtitle C of  
11 the federal Resource Conservation and Recovery Act of 1976,  
12 substances regulated by the federal Toxic Substances Control  
13 Act or low-level radioactive waste;

14 [~~θ.~~] T. "solid waste district" means a geographical  
15 area designated by the board as a solid waste district under  
16 Section [~~11 of the Solid Waste Act~~] 74-9-11 NMSA 1978;

17 [~~P.~~] U. "solid waste facility" means any public or  
18 private system, facility, location, improvements on the land,  
19 structures or other appurtenances or methods used for  
20 processing, transformation, recycling or disposal of solid  
21 waste, including landfill disposal facilities, transfer  
22 stations, resource recovery facilities, incinerators and other  
23 similar facilities not specified, but does not include  
24 equipment specifically approved by order of the director to  
25 render medical waste noninfectious or a facility [~~which~~] that

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1 is permitted pursuant to the provisions of the Hazardous Waste  
2 Act and does not apply to a facility fueled by a densified-  
3 refuse-derived fuel that accepts no other solid waste;

4 ~~[Q.]~~ V. "source reduction" means any action that  
5 causes a net reduction in the generation, volume or toxicity of  
6 solid waste;

7 ~~[R.]~~ W. "special waste" means solid waste that has  
8 unique handling, transportation or disposal requirements to  
9 assure protection of the environment and the public health and  
10 safety;

11 ~~[S.]~~ X. "transformation" means incineration,  
12 pyrolysis, distillation, gasification or biological conversion  
13 other than composting; and

14 ~~[T.]~~ Y. "yard refuse" means vegetative matter  
15 resulting from landscaping, land maintenance and land clearing  
16 operations."

17 Section 2. Section 74-9-8 NMSA 1978 (being Laws 1990,  
18 Chapter 99, Section 8, as amended by Laws 1991, Chapter 185,  
19 Section 2 and also by Laws 1991, Chapter 194, Section 3) is  
20 amended to read:

21 "74-9-8. BOARD ADOPTION OF INITIAL REGULATIONS.--No later  
22 than December 31, ~~[1991]~~ 2010, the board shall adopt  
23 regulations under the authority of this section to:

24 A. implement, administer and enforce a program for  
25 the cost-effective and environmentally safe siting,

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1 construction, operation, maintenance, closure and post-closure  
2 care of solid waste facilities, including financial  
3 responsibility requirements for solid waste facility owners and  
4 operators and also including requirements that assure that the  
5 relative interests of the applicant, other owners of property  
6 likely to be affected and the general public will be considered  
7 prior to the issuance of a permit for a solid waste facility;

8 B. define the solid wastes that are considered  
9 special wastes;

10 C. establish specific requirements for the  
11 detoxification and disposal of special wastes;

12 D. establish classifications of solid waste  
13 facilities and define what types of solid waste may be  
14 processed or disposed of in each classification;

15 E. establish performance standards for the  
16 construction and operation of solid waste facilities that will  
17 assure protection of ground water quality from degradation by  
18 contaminants from solid waste facilities consistent with the  
19 provisions of the Water Quality Act and the regulations and  
20 standards established under that act by the water quality  
21 control commission, provided such regulations shall not allow  
22 permitting of any active solid waste facility larger than five  
23 hundred acres;

24 F. establish performance standards for  
25 transformation facilities that will assure protection of the

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underscored material = new  
[bracketed material] = delete

1 state's environment;

2 G. establish requirements and procedures for the  
3 granting or denial of an application to modify a solid waste  
4 facility permit under Section 74-9-25 NMSA 1978;

5 H. establish requirements and procedures for  
6 commercial haulers to minimize littering and otherwise prevent  
7 degradation of the environment;

8 ~~I. establish an applicant fee schedule for~~  
9 ~~processing permit applications that is based on costs of~~  
10 ~~application review incurred by the division and also costs~~  
11 ~~incurred for investigations of applicants by state departments~~  
12 ~~and agencies other than the division, which regulation shall~~  
13 ~~provide for the reimbursement of these costs to the division or~~  
14 ~~other department or agency from the fees charged and shall also~~  
15 ~~limit the fee to be not greater than ten thousand dollars~~  
16 ~~(\$10,000)]~~

17 I. establish two separate regulatory fee schedules  
18 as follows:

19 (1) the first fee schedule shall be for  
20 processing applications for permits and permit modifications  
21 and shall be based on audited costs of application review  
22 incurred by the division and also audited costs incurred for  
23 investigations of applicants by state departments and agencies  
24 other than the division, which regulations shall provide for  
25 the reimbursement of these costs to the division or other

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1 departments or agencies from the fees charged and shall limit  
2 the total fee to be not greater than sixty thousand dollars  
3 (\$60,000) for publicly or privately owned facilities that  
4 receive four hundred thousand tons or more per year; thirty  
5 thousand dollars (\$30,000) for facilities that receive less  
6 than four hundred thousand tons per year but more than two  
7 hundred thousand tons per year; and twenty thousand dollars  
8 (\$20,000) for facilities that receive two hundred thousand tons  
9 or less per year; or

10 (2) the second fee schedule shall be for  
11 reimbursement of audited costs incurred annually by the  
12 division for technical and administrative oversight of  
13 permitted or registered facilities that have opted into the  
14 active life of site permit pursuant to Section 74-9-24 NMSA  
15 1978 and shall not be greater than fifty thousand dollars  
16 (\$50,000) per year for publicly or privately owned facilities  
17 that receive four hundred thousand tons or more per year;  
18 twenty-five thousand dollars (\$25,000) per year for facilities  
19 that receive less than four hundred thousand tons per year but  
20 more than two hundred thousand tons per year; and twelve  
21 thousand five hundred dollars (\$12,500) per year for facilities  
22 that receive two hundred thousand tons or less per year;

23 J. establish requirements and procedures for a  
24 person to obtain a variance from the application of a  
25 substantive regulation to the person if the person files a

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1 written application for a variance with the director and  
2 demonstrates to the director's satisfaction that:

3 (1) application of the regulation would result  
4 in an arbitrary and unreasonable taking of the applicant's  
5 property or would impose an undue economic burden upon any  
6 lawful business, occupation or activity; and

7 (2) granting the variance will not result in  
8 any condition injurious to human health, safety or welfare or  
9 the environment;

10 K. assure that no variance will be granted under  
11 the provisions of Subsection J of this section until the  
12 director has considered the relative interests of the  
13 applicant, other owners of property likely to be affected and  
14 the general public and that any variance or renewal of a  
15 variance shall be granted for time periods and under conditions  
16 consistent with reasons for the [~~various~~] variance but within  
17 the following limitations:

18 (1) if the variance is granted on the grounds  
19 that there are no practicable means known or available for the  
20 adequate prevention of degradation of the environment or the  
21 risk to the public health, safety or welfare, it shall continue  
22 only until the necessary means for the prevention of the  
23 degradation or risk become known and available; or

24 (2) if the variance is granted on the grounds  
25 that it is justified to relieve or prevent hardship of a kind

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1 other than that provided for in Paragraph (1) of this  
 2 subsection, it shall not be granted for more than one year;

3 L. establish a list of solid wastes that shall not  
 4 be transferred, disposed of or transformed in a solid waste  
 5 facility and prohibit the disposal or transformation of those  
 6 solid wastes in solid waste facilities;

7 M. establish recordkeeping procedures for solid  
 8 waste transfer, landfill disposal and transformation facilities  
 9 that shall include requirements for recording the type, amount  
 10 and origin of solid waste transferred, disposed of or  
 11 transformed at the facility and that require operators of  
 12 landfill disposal, solid waste transfer and transformation  
 13 facilities within the state to:

14 (1) maintain records in a form required by the  
 15 division and file them with the division indicating the type,  
 16 amount, origin and location in a landfill disposal facility of  
 17 solid waste accepted by the facility;

18 (2) maintain copies of the records required  
 19 under Paragraph (1) of this subsection after closure in a  
 20 manner and for the length of time prescribed by the division;  
 21 and

22 (3) make all required records available for  
 23 inspection by the division and the general public during normal  
 24 business hours; and

25 N. require the division to establish a solid waste

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1 facility operator certification program."

2 Section 3. Section 74-9-15 NMSA 1978 (being Laws 1990,  
3 Chapter 99, Section 15) is amended to read:

4 "74-9-15. SPECIFIC PROGRAM--STATE GOVERNMENT SOURCE  
5 REDUCTION AND RECYCLING.--

6 A. The division shall cooperate with the general  
7 services department in its assessment of the status of  
8 recycling efforts undertaken directly by state government for  
9 its own solid waste and its evaluation of existing programs and  
10 its development of necessary recycling programs to reduce the  
11 generation of solid waste by state government. The programs  
12 shall include recycling of office papers, cardboard, used motor  
13 oil, yard waste and other materials produced by the state for  
14 which recycling markets exist or may be developed.

15 B. Each state agency and the legislature shall  
16 prepare a source reduction and recycling plan addressing the  
17 requirements of Subsections C and D of this section. Each  
18 agency plan shall be submitted for approval to the general  
19 services department on or before December 31, 1991, consistent  
20 with the goals and guidelines of this section, the goals stated  
21 in Subsection J of Section [~~6 of the Solid Waste Act~~] 74-9-6  
22 NMSA 1978 and the state plan. Agency plans shall be updated  
23 biennially to increase the amount of solid waste recycled by  
24 taking advantage of any changed circumstances. Updated plans  
25 shall be submitted to the general services department for

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1 approval prior to adoption.

2 C. By July 1, 1992, each state agency and the  
3 legislature shall establish and implement a source separation  
4 and collection program for recyclable materials produced as a  
5 result of agency operations, including, at a minimum, high  
6 grade paper, corrugated paper and glass. The source separation  
7 and collection program shall include, at a minimum, procedures  
8 for collecting and storing recyclable materials and contractual  
9 and other arrangements with buyers. Each agency shall appoint  
10 a recycling coordinator and shall conduct educational programs  
11 about the recycling program for its employees.

12 D. By July 1, 1992, each state agency shall  
13 establish and implement a source reduction program for  
14 materials used in the course of agency operations. The program  
15 shall be designed and implemented to achieve the maximum  
16 feasible reduction of solid waste generated as a result of  
17 agency operations.

18 E. Annual fees assessed by the division for  
19 technical and administrative oversight of publicly owned  
20 facilities pursuant to Section 74-9-8 NMSA 1978 shall be  
21 reduced proportionately by the percentage of waste generated  
22 within the responsible jurisdiction that is either recycled or  
23 composted and not disposed of or transferred as waste to  
24 publicly or privately owned facilities."

25 Section 4. Section 74-9-24 NMSA 1978 (being Laws 1990,  
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1 Chapter 99, Section 24, as amended) is amended to read:

2 "74-9-24. SOLID WASTE FACILITY PERMIT--ISSUANCE AND  
3 DENIAL--GROUNDS--NOTIFICATION OF DECISION--PERMIT RECORDING  
4 REQUIREMENT.--

5 A. The director, within one hundred eighty days  
6 after the application is deemed complete and after a public  
7 hearing, shall issue a permit, issue a permit with terms and  
8 conditions or deny a permit application. The director may deny  
9 a permit application on the basis of information in the  
10 application or evidence presented at the hearing, or both, if  
11 [~~he~~] the director makes a finding that granting the permit  
12 would be contradictory to or in violation of the Solid Waste  
13 Act or any regulation adopted [~~under it. He~~] pursuant to the  
14 provisions of that act. The director may also deny a permit  
15 application if the applicant fails to meet the financial  
16 responsibility requirements established by the board [~~under~~]  
17 pursuant to the provisions of Subsection A of Section 74-9-8  
18 NMSA 1978 and Section 74-9-35 NMSA 1978.

19 B. The director may deny any permit application or  
20 revoke a permit if [~~he~~] the director has reasonable cause to  
21 believe that [~~any~~] a person required to be listed on the  
22 application pursuant to Section 74-9-20 NMSA 1978 has:

23 (1) knowingly misrepresented a material fact  
24 in application for a permit;

25 (2) refused to disclose or failed to disclose

1 the information required [~~under~~] pursuant to the provisions of  
2 Section 74-9-21 NMSA 1978;

3 (3) been convicted of a felony or other crime  
4 involving moral turpitude within ten years immediately  
5 preceding the date of the submission of the permit application;

6 (4) been convicted of a felony, within ten  
7 years immediately preceding the date of the submission of the  
8 permit application, in any court for any crime defined by state  
9 or federal statutes as involving or being restraint of trade,  
10 price-fixing, bribery or fraud;

11 (5) exhibited a history of willful disregard  
12 for environmental laws of any state or the United States; or

13 (6) had any permit revoked or permanently  
14 suspended for cause under the environmental laws of any state  
15 or the United States.

16 C. In making a finding under Subsection B of this  
17 section, the director may consider aggravating and mitigating  
18 factors presented by any party at the hearing.

19 D. If an applicant whose permit is being considered  
20 for denial or revocation on any basis provided in this section  
21 has submitted an affirmative action plan that has been approved  
22 in writing by the director and plan approval includes a period  
23 of operation under a conditional permit or license that will  
24 allow the applicant a reasonable opportunity to affirmatively  
25 demonstrate its rehabilitation, the director may issue a

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1 conditional license for a reasonable period of time of  
2 operation. In approving an affirmative action plan intended to  
3 affirmatively demonstrate rehabilitation, the director may  
4 consider the following factors: implementation by the  
5 applicant of formal policies; training programs and management  
6 control to minimize and prevent the occurrence of future  
7 violations; installation by the applicant of internal  
8 environmental auditing programs; the discharge of individuals  
9 convicted of any crimes set forth in Subsection B of this  
10 section; and such other factors as the director may deem  
11 relevant.

12 E. Within sixty days of the date of the closing of  
13 the hearing on a permit application, the director shall notify  
14 the applicant by certified mail of the issuance, denial or  
15 issuance with conditions of a permit and the reasons [~~therefor~~]  
16 for it. Any person who has made a written request to the  
17 director to be notified of the action taken on the application  
18 shall be given written notice of the director's action.

19 F. No permit for the operation of a solid waste  
20 facility shall be valid until the permit or a notice of the  
21 permit and a legal description of the property on which the  
22 facility is located are filed and recorded in the office of the  
23 county clerk in each county in which the facility is located.

24 G. Except as otherwise provided by law:

25 (1) each permit issued for a publicly owned

1 and publicly or privately operated new or repermited existing  
2 landfill, transfer station, recycling facility or composting  
3 facility shall remain in effect throughout the active life of  
4 the landfill, transfer station, recycling facility or  
5 composting facility as described in the approved permit [~~or for~~  
6 ~~twenty years, whichever is less.~~ Each permit issued for a  
7 ~~publicly owned landfill, transfer station, recycling facility~~  
8 ~~or composting facility that is privately operated pursuant to a~~  
9 ~~contract of no more than four years duration entered into in~~  
10 ~~accordance with the state or local procurement code shall~~  
11 ~~remain in effect throughout the active life of the landfill,~~  
12 ~~transfer station, recycling facility or composting facility as~~  
13 ~~described in the approved permit or for twenty years, whichever~~  
14 ~~is less. Each time the contract is renewed, the director shall~~  
15 ~~review the contract to determine whether the term of the permit~~  
16 ~~shall be governed by this paragraph or Paragraph (2) of this~~  
17 ~~section] or for twenty years, whichever the applicant chooses.~~  
18 If the applicant opts for an active life of site permit that is  
19 greater than twenty years, annual fees for audited costs  
20 incurred by the division for technical and administrative  
21 review shall be reimbursed pursuant to Section 74-9-8 NMSA  
22 1978. Applicants for permits sought after July 1, 2009 shall  
23 indicate in their application whether they are seeking a permit  
24 term of twenty years or for the active life of the facility;  
25 provided that the facility in question is in compliance with

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1 the Solid Waste Act and the solid waste management regulations.

2 Owners of facilities permitted prior to July 1, 2009 shall

3 submit in writing to the division no later than thirty days

4 after the board promulgates regulations pursuant to

5 requirements in Section 74-9-8 NMSA 1978 their decision to

6 remain in the twenty-year permit cycle or to opt into the

7 active life of site permit. Each permit shall be reviewed by

8 the department of environment at least once every ten years.

9 The review shall address the operation, compliance history,

10 financial assurance and technical requirements for the

11 landfill, transfer station, recycling facility or composting

12 facility. At the time of the review there shall be public

13 notice in the manner prescribed by Section 74-9-22 NMSA 1978.

14 If the secretary of environment determines that there is

15 significant public interest, a nonadjudicatory hearing shall be

16 held as part of the review. The secretary may require

17 appropriate modifications of the permit, including

18 modifications necessary to make the permit terms and conditions

19 consistent with statutes, regulations or judicial decisions;

20 (2) each permit issued for a privately owned

21 new or repermited existing [~~landfill, transfer station,~~

22 ~~recycling facility or composting~~] facility shall remain in

23 effect [~~for ten years or for the active life of the facility,~~

24 ~~whichever is less.~~ Each permit issued for a publicly owned

25 ~~landfill, transfer station, recycling facility or composting~~

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1 ~~facility that is leased to a private person or that is operated~~  
2 ~~by a private person pursuant to a contract of more than four~~  
3 ~~years duration shall remain in effect for ten years or for the~~  
4 ~~active life of the landfill or facility, whichever is less]~~  
5 throughout the active life of the facility as described in the  
6 approved permit, or for twenty years, whichever the applicant  
7 chooses. If the applicant opts for an active life of site  
8 permit, the annual fees for audited costs incurred by the  
9 division for technical and administrative review shall be  
10 reimbursed pursuant to Section 74-9-8 NMSA 1978. Applicants  
11 for permits sought after July 1, 2009 shall indicate in their  
12 application whether they are seeking a permit term of twenty  
13 years or for the active life of the facility; provided that the  
14 facility in question is in compliance with the Solid Waste Act  
15 and the solid waste management regulations. Owners of  
16 privately held facilities permitted prior to July 1, 2009 shall  
17 submit in writing to the division no later than thirty days  
18 after the board promulgates regulations pursuant to  
19 requirements in Section 74-9-8 NMSA 1978 their decision to opt  
20 into the twenty-year permit cycle or to opt into the active  
21 life of site permit. If a privately owned facility opts into  
22 the twenty-year permit cycle, the twenty-year permit term shall  
23 be reduced by the number of years the facility has operated  
24 under its current permit. For privately owned facilities that  
25 opt into either the twenty-year permit term or the active life

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1 of site permit term, the facility owners shall adjust financial  
2 assurance coverage to accommodate requirements pursuant to the  
3 solid waste management regulations. Each permit shall be  
4 reviewed at least every [~~five~~] ten years by the department of  
5 environment. Interested parties may petition the department  
6 for review, in addition to the [~~five-year~~] ten-year review,  
7 provided that the director [~~shall have~~] has discretion to  
8 determine whether there is good cause for such an additional  
9 review. The review shall address the operation, compliance  
10 history, financial assurance and technical requirements for the  
11 landfill, transfer station, recycling facility or composting  
12 facility. At the time of the review there shall be public  
13 notice in the manner prescribed by Section 74-9-22 NMSA 1978.  
14 If the secretary of environment determines that there is  
15 significant public interest, a nonadjudicatory hearing shall be  
16 held as part of the review. The secretary may require  
17 appropriate modifications of the permit, including  
18 modifications necessary to make the permit terms and conditions  
19 consistent with statutes, regulations or judicial decisions;  
20 and

21 (3) the term of permits for facilities not  
22 specified by this subsection shall be governed by existing or  
23 amended regulations adopted by the board.

24 H. The director shall issue separate special waste  
25 permits for all solid waste facilities that transfer, process,

1 transform, recycle or dispose of special waste pursuant to  
2 regulations adopted by the board."

3 Section 5. REPEAL.--Laws 1991, Chapter 185, Section 2 is  
4 repealed.

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underscoring material = new  
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